IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6891 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KANDLA PORT WORKERS' UNION - Petitioner
Versus
UNION OF INDIA & 1 - Respondents

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Appearance :
MR HJ NANAVATI for Petitioner.
MR JS YADAV for Respondent No. 1.
RULE SERVED BY DS for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/01/2006
ORAL JUDGMENT

1.The petitioner – Kandla Port Workers' Union has filed this petition under Article 226 of the Constitution of India praying for declaration that the action of the respondents of not including the names of 306 employees in the impugned order at Annexure A passed by the Under Secretary to the Govt. of India, Ministry of Food, Department of Food Procurement and Distribution, New Delhi is void and inoperative. The petitioner has also sought for the direction to the Govt. of India to issue appropriate order clarifying that all the 321 employees (including all employees listed in Annexure C) as having been transferred to Food Corporation of India under Section 12A of the Food Corporation Act, 1964 with effect from 01.01.1973.

2.It is the case of the petitioner union that the

petitioner union was representing workers employed under the Kandla Port Trust. The members of the petitioner union include those employees who were upto 1973 working in the Vacuvator division of the Kandla Port Trust and taken over by the Food Corporation of India with effect from 01.01.1973. It is also the case of the petitioner that initially, the work of loading and unloading foodgrains at Kandla Port was undertaken departmentally by the Govt. of India. In 1965, the aforesaid work was transferred to Kandla Port Trust which is a body set up under the Kandla Port Trust Act, 1963. An agreement was executed between the Government of India on the one hand and the Trustees of the Port of Kandla on the other hand on 08.04.1965 on the question of loading and unloading of foodgrains at Kandla. It was stated in the said agreement that the Board of Kandla Port Trust was willing to act as an Agent of the Government for the purpose of

assembly, operation and maintainance of wheat discharging machines (Wit Vacuvators) on behalf of the Government of India in connection with discharge of foodgrains, on vessels arriving at Kandla as and when required by the Government with machines and equipments provided by the Government. It was agreed that the Government of India shall, for the purposes of the aforesaid work supply to the Board 25 Vacuvators of DK-168 type and all ancillary equipments. It was further agreed that the Board on behalf of the Port Trust shall be responsible for the operation and maintainance of the machines with a view to obtaining the best possible performance. Therefore, for that purpose, the Board would provide adequate number of staff employed for the various stages of operation and of maintainance. It was also agreed that for the purpose of reconciliation of expenditure, the Board shall submit monthly statement together with account of all

expenditure in such form and detail. It was further agreed that on conclusion of termination of the agreement, the Board of the Port Trust shall return all the machineries, equipments, and spare parts given to the Board by the Government or purchased by the Board on behalf of the Government in good condition. It was further agreed that the Government shall, at the conclusion or termination of this agreement also take over the staff engaged by the Board for working this agreement.

3.The arrangement namely the loading and unloading work carried out by Kandla Port Trust as an Agent of the Government of India continued upto the end of 1972. With effect from 01.01.1973, the aforesaid work was transferred to the Food Corporation of India, a Statutory Corporation set up under the Food Corporation of India Act, 1964. As a result thereof, the employees who were working in

Vacuvator Division of the Kandla Port Trust were taken over by the Food Corporation of India. On 18.09.1973, an office order was issued by FCI in this context on the question of taking over of the employees of the Kandla Port Trust who were working in the Vacuvator Division. The order provided inter alia that the required employees of the Vacuvator Division of the Kandla Port Trust were taken over as confirmed in the appropriate post indicated against each and would be subject to service conditions of the provisions of the Act and Regulation. The staff was thus taken over with effect from 01.01.1973. Several other provisions concerning service conditions of the staff who were taken over were also contained therein. The said office order was accompanied by a statement showing the names of employees of the Kandla Port Trust Vacuvator Division taken over by FCI as on 01.01.1973. The said statement contained names of 318 employees.

The names of 3 employees taken over along with the employees mentioned in the said statement were subsequently added by FCI.

4.In the above background of the matter, Mr. H.J. Nanavati, learned advocate appearing for the petitioner has submitted that as per the provisions of Section 12A(i) of FCI Act, where the Central Government has ceased to perform any functions which under Section 13 are functions of FCI, it shall be lawful for the Central Government to transfer any of the Officers or employees serving in the concerned department of the Central Government dealing with food or any office subordinate or attached offices and engaged in the performance of these functions to the Corporation. Sub-section (4) of Section 12A of FCI Act, 1965 provides that every officer or every employee transferred by an order made under Sub-section (i) will have provision to exercise the option in writing to

be governed by (a) the pay scale applicable to post held by him in the Government immediately before the date of his transfer to the Corporation; and (b) by the leave, PF, retirement and other terminal benefits concerning to the employees of the Central Government. The option is required to be exercised within six months from the date of transfer.

5.Mr. Nanavati has further submitted that even after the transfer of the employees governed by Section 12A to the Food Corporation of India Act, they continued to be entitled to the pay scale as well as leave, retirement benefits etc. according to the Central Government Rules. The question about the right of exercise of option in favour of the Central Government pay scale and pensionary benefits etc. was the subject matter of Industrial Dispute between the management of FCI and the workmen (who were

represented by the petitioner union) and the dispute was referred to the Industrial Tribunal, Ahmedabad under Section 10 of the I.D. Act, 1944. The Tribunal allowed the Reference vide its award dated 05.08.1991. The Tribunal directed that 15 employees mentioned therein should be given option in respect of pay and pay scale as provided in certain Circulars of FCI. The Tribunal also granted the demand of the workmen in respect of regularisation of CPF/GPF subscription and contribution from 1965 to March 1973. The dispute referred to the Tribunal was in respect of the employees who were working in the Vacuvator division of the Kandla Port Trust and were transferred to FCI with effect from 01.01.1973. So far as the question of regularisation of CPF/GPF contribution was concerned, the demand relating to option in the matter of declaration confined to 15 workers. While passing the order, the Tribunal allowed

both the demands. However, in the order, the reference was made to 15 employees only. In the operative part, the order in so far as it pertains to option in respect of pay etc. was confined to 15 employees only. It was then provided that the concerned workmen on their transfer to FCI with effect from 01.01.1973 would be entitled to exercise option u/S. 12A (4) of the Act and this part of the order was related to pensionary benefits etc.

6.Mr. Nanavati has further submitted that the award passed by the Tribunal was challenged by FCI by filing Special Civil Application No. 7041 of 1993 before this Court and this Court vide its order and judgment dated 21.09.1994 has dismissed the said Special Civil Application. The matter was taken further to the Hon'ble Supreme Court by filing Special Leave Petition (C) No. 12630 of 1995 and the said petition was also dismissed by the Hon'ble

Apex Court on 12.07.1995. Mr. Nanavati has, therefore, submitted that despite the aforesaid position flowing from the award of the Tribunal as confirmed by this Court and by the Hon'ble Apex Court, number of employees have not been given the benefit of Section 12A of the Food Corporation Act, 1964.

7.In the above view of the matter, the petitioner union has been pursuing the matter with the FCI management. The Government of India has issued an order dated nil sometime in May 1996 under Section 12A of the FCI Act. The Government has provided therein that 15 employees mentioned therein would stand transferred to FCI w.e.f. 01.01.1973. He has further submitted that like these 15 employees mentioned in the order of the Tribunal, there were around 306 employees working in the Vacuvator division of the Kandla Port Trust and were taken over by FCI w.e.f. 01.01.1973. However, the Govt. has not issued

any order regarding their transfer to FCI w.e.f. 01.01.1973 under Section 12A of FCI Act. He has further submitted that all the 321 employees including the 15 employees referred to in the order of the Tribunal had been transferred to FCI. Their transfer to FCI was always required to be treated as transferred under Section 12A of FCI Act. However, when the Govt. has chosen to issue a specific order under Section 12A pertaining to 15 employees, there is no just and proper reason as to why the remaining 306 employees were not mentioned in the said order of the Govt. of India. He has, therefore, submitted that though the other employees are similarly situated like those referred to in the impugned order, they have been left out without any reason or any basis. The respondents have treated unequally which tantamounts to hostile discrimination amongst class. Mr. Nanavati has further submitted that all the workers were originally appointed in

the Vacuvator division under the control of the Kandla Port Trust. At the relevant time, Kandla Port Trust was working as an agent of the Central Government in the context of working of loading and unloading foodgrains at Kandla Port. After the establishment of FCI, the said work was entrusted to FCI. So far as Kandla Port Trust was concerned, the said work was entrusted to FCI on 01.01.1973. When all the employees working in the Vacuvator division of the Kandla Port Trust were transferred to FCI w.e.f. 01.01.1973, there is no reason to discriminate the remaining 306 other employees not mentioned in the order passed by Govt. of India. He has, therefore, submitted that the 306 employees left out are also entitled to be treated equally with 15 employees whose names have been specifically mentioned in the order. The exclusion of 306 employees from being treated as employees of FCI created invidious discrimination amongst similarly situated

employees, not countenanced by Arts. 14 & 16 of the Constitution of India. He has, therefore, submitted that the Govt. of India is required to be directed to issue similar orders or to suitably enlarge the said order so as to provide the transfer of all the 321 employees including 15 employees mentioned in the order of FCI under Section 12A of FCI Act w.e.f. 01.01.1973.

8.Mr. J.S. Yadav, learned advocate appearing for the Union of India has submitted that Food Corporation of India took over services of the employees w.e.f. 01.01.1973 and all the employees are governed by Food Corporation of India Staff Regulations, 1971. Since all the employees were taken afresh from 01.01.1973 and since all these employees were not the employees of Food Department of Govt., question of their transfer under Section 12A does not arise. The Notification was issued by the

Govt. for 15 employees because award was passed only for 15 employees and not for 306 employees as claimed in the petition and this award was not the award for 306 employees. The employees working under Kandla Port Trust were taken over by FCI w.e.f. 01.01.1973. These employees were not transferred by the Govt. under Section 12A of the Act, since they were not government employees. On 31.12.1972, these employees were neither belonging to Food department nor to FCI. These employees were taken over by FCI from Kandla Port Trust with a view to avoid retrenchment of these employees. All these employees were taken over by an order dated 18.09.1973 which clearly states that employees are taken over w.e.f. 01.01.1973 and they will be governed by Service regulation of FCI. Hence, the question of transfer of these employees under Section 12A of the Act does not arise. Since these employees are not covered under Section 12A of the Act, Section 12A (4)

is not applicable to them. He has further submitted that the award passed by the Tribunal is applicable to 15 employees only and it extends the benefit to 15 employees only and not to other employees. The award is not challenged by the petitioner union. On the contrary, the same is challenged by FCI and it has become final upto Supreme Court. He has, therefore, submitted that the relief claimed in the present petition cannot be granted.

9.After having heard learned advocates appearing for the respective parties and after having gone through the award passed by the Industrial Tribunal, the judgment of this Court and other documents which are produced on record, the Court is of the view that simply because the names of 15 employees were mentioned in the award, the benefit which is conferred upon all the employees who were taken over by FCI on 01.01.1973 cannot be denied. The Notification

issued by the Govt. of India on 09.05.1996 conferring benefit to 15 employees only is not just and proper. The award passed by the Industrial Tribunal is very clear and it is stated in more than one place that a Committee was set up to go into the revision of pay scale of the staff working in FCI in different categories. The Committee had submitted its report which was circulated by FCI vide Circular No. 1/1/1976/IPL/CEL dated 01.05.1976. The Circular inter alia provided that the staff members appointed by FCI before 01.01.1973 should be given option to opt for fixation of pay even on a later date. Such an option was not given to the concerned workmen on the ground that they were not on the rolls of FCI before 01.01.1973. They were taken over by FCI on 01.01.1973 and hence such an option was not given to them, with the result that their pay in the revised pay scales was fixed w.e.f. 01.01.1973 with the next increment on

01.01.1974. It is the contention of the petitioner union that the concerned workmen should have been given option treating them as in the service of FCI before 01.01.1973. The Industrial Tribunal found considerable substance in this contention. Their services were treated as continuous. They were not paid retrenchment compensation for the period of service rendered by them before 01.01.1973. They were also not given the amount of gratuity by the Board or the Govt. of India in respect of the period of service rendered by them before 01.01.1973 but FCI was made responsible for payment of gratuity of that period also. The Tribunal, therefore, held that this should go to show that their services upto 01.01.1973 had not come to an end and their services had continued. They were merely transferred to FCI which had not resulted in termination of their previous services. Their amount credited in PF Scheme were also taken over or transferred to

FCI while switching them over to CPF Scheme. Therefore, for all legal intent and purposes, they must be deemed to have been in the services of FCI before 01.01.1973, particularly when the period of service rendered by them before 01.01.1973 was taken into consideration by FCI even for payment of gratuity of that period. The Tribunal further held that FCI will have to treat them as in its service before 01.01.1973. This being the position, the FCI was required to give them option in regard to the date from which they would like to be placed in the revised pay scales. The Tribunal has, therefore, rightly directed the FCI to give the said statutory right for exercise of option in regard to the matters enumerated, in view of the provision of law and thereafter, take necessary steps accordingly. This Court is in agreement with the finding arrived at by the Tribunal as well as the submissions made on behalf of the petitioner

union that this statutory right is available to all the 321 employees and it is not merely confining to 15 employees only. The Court is, therefore, of the view that the Notification issued by the Govt. of India on 09.05.1996 is not merely confining to 15 employees only, but it is also treated to have been extended to all the 321 employees including those 15 employees whose names were mentioned in the award of the Industrial Tribunal.

10.In the result, the petition is accordingly allowed. The respondent No. 1 is hereby directed to issue appropriate order clarifying that all the 321 employees including all the employees listed in the order of the Industrial Tribunal as having been transferred to FCI under Section 12A of the FCI Act, 1964 w.e.f. 01.01.1973. Necessary clarification must be made within one month from the date of receipt of the writ from this Court or from the date of

receipt of certified copy of this order, whichever is earlier. Rule is made absolute accordingly without any order as to costs.

[K.A. PUJ, J.]

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